

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
: Case No. PERA-R-17-302-E
: (PERA-R-03-246-E)
:
PENNSYLVANIA STATE SYSTEM OF :
HIGHER EDUCATION :

ORDER DIRECTING SUBMISSION OF ELIGIBILITY LIST

A Petition for Representation under the Public Employee Relations Act (PERA or Act) was filed with the Pennsylvania Labor Relations Board (Board) on October 23, 2017, accompanied by a showing of interest and alleging that thirty percent or more of certain employees of the Pennsylvania State System of Higher Education (PASSHE) desire to be represented by the PASSHE Officers Association (Petitioner). The Petitioner further alleged that there are presently 180 bargaining unit employees currently represented by the International Union of Security, Police and Fire Professionals of America (Incumbent Union),¹ and that an agreement covering those employees expired on August 31, 2017. Petitioner requested that pursuant to Section 607 of PERA, the Board schedule a hearing and order an election.

On October 24, 2017, the Board acknowledged the filing of the petition and directed PASSHE to furnish the Board with a list of the employees in the unit on the payroll immediately prior to the filing of the petition. On October 27, 2017, the Board received an employee list from PASSHE containing the names of 205 employees in the unit as of the filing of the petition. Based on the employee list submitted by PASSHE, it was determined that the Petitioner had failed to submit a thirty percent showing of interest as required by Section 607 of PERA. Therefore, on October 31, 2017, the Secretary declined to direct a hearing and dismissed the Petition for Representation.

On November 6, 2017, the Petitioner filed timely exceptions with the Board, challenging the Secretary's dismissal of the Petition for Representation and alleging that the employee list submitted by PASSHE included individuals who are not employed in the job classifications that are included in the bargaining unit. On December 19, 2017, the Board remanded the matter to the Secretary with direction to order a hearing, limited solely to the accuracy of PASSHE's list of employees.

On January 2, 2018, the Secretary issued an Order and Notice of Hearing, in which the matter was assigned to a prehearing conference, and designating February 15, 2018, in Harrisburg, as the time and place of hearing, if necessary. The parties elected to submit stipulations of fact in lieu of appearing for a hearing on the matter. The Board received the duly executed stipulations on or about February 1, 2018.

¹ On October 3, 2003, in Case No. PERA-R-03-246-E, the Board certified the Incumbent Union as the exclusive bargaining representative for a unit of PASSHE employees who are full-time and regular part-time security guards.

On February 9, 2018, I issued an order, finding that the Petitioner had demonstrated a requisite showing of interest based on the parties' stipulation that the accurate list of employees on the payroll immediately prior to the filing date of the petition actually includes the names of 201 employees, and transferring the matter back to the Secretary for further proceedings consistent therewith.

On February 15, 2018, the Secretary issued an Order and Notice of Hearing, once again assigning the matter to conciliation and directing a hearing on May 2, 2018. The hearing was necessary and was held as scheduled on May 2, 2018, during which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses, and introduce documentary evidence. The Petitioner filed a post-hearing brief on June 15, 2018. The Incumbent Union filed a post-hearing brief on July 3, 2018. PASSHE did not file a post-hearing brief.

The Examiner, on the basis of all matters and documents of record, makes the following:

FINDINGS OF FACT

1. PASSHE is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. The Petitioner is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. The Incumbent Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 6)
4. The Incumbent Union is the exclusive bargaining agent for a unit certified as "[a]ll full-time and regular part-time security guards, including but not limited to Patrol Officer and Police Specialist; and excluding management level employees, supervisors, first level supervisors, confidential employees and prison guards as defined in the Act." (PERA-R-03-246-E, as amended at PERA-U-07-487-E)
5. PASSHE and the Incumbent Union were parties to a collective bargaining agreement (CBA), which was effective from September 1, 2014 through August 31, 2017. (Joint Exhibit 1)
6. PASSHE and the Incumbent Union began negotiating for a successor agreement prior to the August 31, 2017 expiration of the CBA. (N.T. 16)
7. PASSHE and the Incumbent Union reached a tentative agreement for a successor CBA on October 19, 2017. (N.T. 16-17; Incumbent Union Exhibit 1)
8. The Petitioner filed the instant Petition for Representation on October 23, 2017.
9. The Incumbent Union ratified the successor CBA on October 24, 2017. (N.T. 10, 23)
10. On November 13, 2017, PASSHE and the Incumbent Union executed the successor agreement, which purportedly has a term of September 1, 2017 through August 31, 2020. (N.T. 19; Incumbent Union Exhibit 2)

DISCUSSION

The Petitioner Association has petitioned to represent the bargaining unit of security guards employed by PASSHE. However, the Incumbent Union contends that the petition should be dismissed because it is barred by the execution of a successor agreement between PASSHE and the Incumbent Union.

Section 605 of PERA provides as follows:

Representation elections shall be conducted by secret ballot at such times and places selected by the [B]oard subject to the following:

(7) (i) No election shall be conducted pursuant to this section in any appropriate bargaining unit within which in the preceding twelve-month period an election shall have been held nor during the term of any lawful collective bargaining agreement between a public employer and an employee representative. This restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years. For purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

43 P.S. § 1101.605(7) (i).

The contract-bar rule, as applied by the Board, requires proof that the contract has been reduced to writing, that the contract is signed and that the signatures are the public employer and the certified representative of the employees. Scott Township, 33 PPER ¶ 33093 (Proposed Order of Dismissal, 2002), 33 PPER ¶ 33150 (Final Order, 2002). Contracts not signed before the filing of a petition cannot serve as a bar. Lehigh County Vo-Tech School, 18 PPER ¶ 18038 (Order Directing Submission of Eligibility List, 1987). For contract bar purposes, there is no necessity for prior ratification by the union's membership where the collective bargaining agreement contains no express requirement. Scott Township, 33 PPER at 334.

In this case, the record shows that PASSHE and the Incumbent Union did not execute the successor agreement until November 19, 2017, which was well after the date on which the Petitioner filed the instant Petition for Representation on October 23, 2017. The Incumbent Union argues that the Board should focus on the date it reached a tentative agreement with PASSHE, which was October 19, 2017. However, PASSHE's enabling legislation in Act 188 specifically reserves the power to enter into collective bargaining agreements to its Board of Governors. 24 P.S. § 20-2006-A(a)(8). The record does not show that PASSHE's Board of Governors entered or ratified the October 19, 2017 tentative agreement at any time prior to the October 23, 2017 Petition for Representation. Instead, the tentative agreement was signed by Bretni Lentz, Chief Negotiator, on behalf of PASSHE. (Incumbent Union Exhibit 1). In similar circumstances, where a public employer's enabling legislation mandates that its governing body take any action regarding the disputed matter, the Board has declined to enforce alleged agreements between the employee representative and employer absent proof that a majority of the employer's governing body approved the agreement. Upper Moreland-Hatboro Joint Sewer Authority, 30 PPER ¶ 30220 (Final Order, 1999); City of McKeesport, 31 PPER ¶ 31130

(Final Order, 2000). As a result, the Petition for Representation is not barred.

CONCLUSIONS

The Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. PASSHE is a public employer within the meaning of Section 301(1) of PERA.

2. The Petitioner is an employee organization within the meaning of Section 301(3) of PERA.

3. The Incumbent Union is an employee organization within the meaning of Section 301(3) of PERA.

4. The Board has jurisdiction over the parties.

5. The unit appropriate for the purpose of collective bargaining is a subdivision of the employer unit comprised of all full-time and regular part-time security guards, including but not limited to Patrol Officer and Police Specialist; and excluding management level employees, supervisors, first level supervisors, confidential employees and prison guards as defined in the Act.

6. The Petition for Representation is not subject to the contract bar.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

HEREBY ORDERS AND DIRECTS

that PASSHE shall within ten (10) days from the date hereof submit to the Board a current alphabetized list of the names and addresses of the employees eligible for inclusion in the unit set forth in Conclusion 5 above.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that any exceptions to this decision and order may be filed to the order of the Board's Representative to be issued pursuant to 34 Pa. Code § 95.96(b).

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania this 19th day of July, 2018.

PENNSYLVANIA LABOR RELATION BOARD

John Pozniak, Hearing Examiner

